

# EXHIBIT I

1 resolve the eleven objections to this motion. We received  
2 -- we've entered into stipulations with two of the  
3 objectors, PHH and Plaza Mortgage, adjourning their hearing  
4 on their objections to a later date.

5 And so I won't be addressing their objections  
6 directly.

7 THE COURT: All right.

8 MR. DEFILIPPO: Their rights are reserved till the  
9 next hearing.

10 THE COURT: Have there been similar discussions  
11 with the other nine in terms of adjournments?

12 MR. DEFILIPPO: Yes, Your Honor, there have, but  
13 we've been unable to reach agreement with the other  
14 objectors on adjourning their objections to a later date.

15 So with your permission, we would like to proceed  
16 with the motion.

17 THE COURT: Okay.

18 MR. DEFILIPPO: As Your Honor knows, Lehman  
19 Brothers, like other large financial institutions had a  
20 substantial mortgage business. It acquired individual  
21 mortgage loans and resold those mortgages. It used a  
22 purchase agreement, which contained indemnification  
23 provisions for losses suffered, as a result of breaches of  
24 representations and warranties by the sellers.

25 Lehman monetized the mortgages it acquired

1 primarily in one of two ways, it either sold them to a GSE  
2 like Fannie Mae or Freddie Mac, or it sold the mortgages to  
3 RMBS Trust Solution Securities to finance the purchase price  
4 that was used to pay Lehman for the mortgages.

5 As the mortgages defaulted, losses were suffered  
6 by both the GSEs and the trust. This gave rise to claims  
7 against Lehman.

8 Fannie and Freddie claims for about 20 billion,  
9 the trustees of the approximately 405 private label RMBS  
10 trusts have filed claims in excess of 30 billion. The  
11 resolution of the GSE's claims occurred in January and  
12 February of this year.

13 As a result, Lehman's indemnification claims  
14 against the sellers have accrued and are now able to be  
15 liquidated for the benefit of Lehman's creditors under the  
16 plan.

17 The proposed ADR procedure is the first step which  
18 Lehman proposes to use in liquidating those indemnity  
19 claims. That's parenthetically why we believe there are no  
20 statute of limitations defenses to these claims as  
21 indemnification accrues when payment is made on the  
22 indemnified claim.

23 We recognize the sellers may feel differently, but  
24 that issue is not before Your Honor today. In fact, nothing  
25 about the merits of the indemnification claims is before the

1 Court today.

2 One important thing about the Fannie and Freddie  
3 settlements, Your Honor, is that in order to achieve those  
4 settlements, the GSEs did a deep dive into their loan files  
5 and identified thousands of individual loans with breaches  
6 and losses, which Lehman was able to review and talk to  
7 Fannie and Freddie about if they disagreed. But Lehman was,  
8 in fact, able to satisfy itself that breaches did occur,  
9 which gave rise to losses and so was comfortable agreeing to  
10 allow Fannie a claim of \$2.15 billion and to pay Freddie  
11 \$767 million for an assignment of all of its claims against  
12 the estate.

13 The debtors are now in a position to pursue the  
14 sellers of the mortgages to Fannie and Freddie through LBHI  
15 for their losses.

16 The next step in the process of claims resolution  
17 arising from the mortgage business will be tackling the  
18 approximately 30 billion in claims and the trustees. Those  
19 claims involve 15 to 20,000 allegedly defective loans sold  
20 to LBHI and resold to the trust.

21 In earlier proceedings in this case, Judge Peck  
22 expressed the view that in order to prove their claims, the  
23 trustees likely had to show losses on a loan-by-loan basis.  
24 So if the trustees' claims are ever to get resolved, we  
25 expect that it will be a monumental undertaking and very

1 time-consuming to engage in that detailed loan-by-loan  
2 analysis.

3 So we may be back before the Court at a proper  
4 time asking Your Honor to either expand this ADR if you're  
5 inclined to grant it, or to establish a new procedure to  
6 resolve the amount of the trustees' losses and to add the  
7 indemnification claims against the sellers that arise from  
8 the payment on those losses to the ADR procedure that we're  
9 asking you to establish today.

10 The purpose of giving Your Honor that background  
11 is to give you a sense of the magnitude of the challenge  
12 facing Lehman, as it attempts to manage the claims arising  
13 out of its mortgage business, and the causes of action that  
14 accrue in its favor when those claims are finally paid by  
15 the estate.

16 It's not often that we encounter a set of claims  
17 with thousands of potentially responsible parties on the  
18 other side like the ones that arise out of this business.  
19 And problems of that magnitude are not suitable for  
20 resolution by standard litigation procedures by filing suit,  
21 engaging discovery, and going to trial. It's time  
22 consuming, it's expensive. It burdens the courts.

23 There are other instances where the --

24 THE COURT: So it's not amenable to a defendant  
25 class action?

1 MR. DEFILIPPO: No, Your Honor. No, I wish it  
2 were, but in other instances when the universe of potential  
3 defendants was very large such in the derivatives area --

4 THE COURT: Right.

5 MR. DEFILIPPO: -- the Court has entered an order  
6 establishing an ADR procedure, which included the  
7 possibility of mandatory but non-binding arbitration. And  
8 Lehman's prior experience in using those procedures has been  
9 very successful, as more than a 2 and a quarter billion has  
10 been recovered through ADR procedures.

11 So hoping to duplicate that success, we are  
12 seeking a pre-litigation mandatory ADR program to deal with  
13 the indemnification claims against the sellers of the  
14 thousands of loans which it has reacquired from the GSEs and  
15 which may be augmented by loans which it may reacquire from  
16 the RMBS trustees.

17 The proposed program will have a notice response  
18 date, a negotiation period, and if there is no settlement,  
19 then the option for a mediation phase, similar to the other  
20 ADR programs.

21 And contrary to some of the objectors'  
22 contentions, those programs have been established even when  
23 there has been no pending adversary proceeding. Besides our  
24 own derivatives procedure in this case, Judge Glenn ordered  
25 mandatory mediation in the Residential Capital case on plan

1 issues, Your Honor ordered it in Light Square without a  
2 pending adversary proceeding.

3 And we want to assure both the Court and the  
4 objectors that the debtors are not interested in wasting  
5 time and money mediating claims that have been released.  
6 But there are many claims that have not been released, and  
7 the debtors have the obligation under the plan to liquidate  
8 those claims for the benefit of their creditors.

9 I would note that the standing order allows the  
10 Court to let someone out of mediation if Your Honor  
11 concludes that the matter is not appropriate for mediation.  
12 So individualized objections to mediation are still  
13 available, are not being foreclosed by this process. And if  
14 someone doesn't think they belong in mediation, they're free  
15 to come before Your Honor.

16 THE COURT: That's the part that I -- I mean,  
17 there are a number of things that I don't understand about  
18 the objections and that was one of them. That given that  
19 there's a mechanism, an escape ballot if you will, I didn't  
20 understand why that doesn't suffice. Secondly, the  
21 indication of Stern versus Marshall and not Arkinson  
22 continues to amaze. It's got nothing whatsoever to do with  
23 this. Zero.

24 MR. DEFILIPPO: Thank you, Your Honor, I can skip  
25 much of this presentation.

1 THE COURT: Please.

2 MR. DEFILIPPO: And one of the corollaries --

3 THE COURT: I mean, you folks can attempt to  
4 convince me that it does if you like, but my view is that it  
5 didn't -- when it was just Stern versus Marshall and it  
6 super doesn't now that the Supreme Court has weighed in  
7 again in Arkinson, so.

8 MR. DEFILIPPO: I think it just confuses the  
9 Court's power to enter an order in the Chapter 11 case with  
10 the Court's power to enter a final judgment in a non-core  
11 adversary proceeding. This is --

12 THE COURT: It's got nothing --

13 MR. DEFILIPPO: -- part of the administrative of  
14 the case.

15 THE COURT: Right.

16 MR. DEFILIPPO: So this is a contested matter  
17 under Rule 9014, and to the extent objectors have argued  
18 that Your Honor can't reach them on this motion, Your Honor  
19 has nationwide jurisdiction over anyone with minimum  
20 contacts with the U.S. in a contested matter. I don't need  
21 to spend a lot of time on that.

22 We are asking you to do what's been done before in  
23 this case, which is we've cited to Your Honor cases that say  
24 it's the law of the case. We believe we've established that  
25 the scope of the Court's post confirmation jurisdiction is



1 broad enough to allow this order to be entered.

2 The DPH case, the Second Circuit expressly adopted  
3 the close nexus test for post-confirmation jurisdiction and  
4 found that it existed because resolution of the dispute in  
5 that case would impact the implementation, execution, and  
6 administration of the confirmed plan.

7 In Allegiance Telecom, Judge Drain exercised  
8 jurisdiction over the post-confirmation effort by the plan  
9 administrator to recover assets. There's been a reservation  
10 of jurisdiction, a very broad reservation in the plan.  
11 8.1.4(b) of the plan in paragraph 79 of the confirmation  
12 order reserved the debtors' right to prosecute  
13 indemnification claims.

14 Section 6 of the plan -- Article 6 of the plan  
15 says in 6.1(b)(3) and (b)(4) that the plan administrator is  
16 to liquidate all assets including prosecuting liquidation  
17 claims. 8.3, the plan says the plan administrator is to  
18 make distributions of available cash semi-annually including  
19 cash augmented by post-confirmation recoveries.

20 And Article 14 contains the broad reservation of  
21 jurisdiction or for all matters arising under, arising out  
22 of, or related to the Chapter 11 cases.

23 This is a liquidating plan and in Eastern Airlines  
24 Judge Lifland opined that the scope of post-confirmation  
25 jurisdiction and liquidating cases is broader than in a

1 reorganized debtors' case, where the debtor operates,  
2 expecting that the Court would be involved in post-  
3 confirmation efforts to liquidate the assets. None of the  
4 objectors have even mentioned the Eastern case in their  
5 objections. And this motion is the first step in the plan  
6 administrator's efforts to liquidate these recently accrued  
7 causes of action.

8           The Chris case is helpful from the district court.  
9 District Judge Lynch found that the close nexus test was  
10 satisfied because the liquidating trust was given power to  
11 prosecute the claims that were transferred to it under the  
12 plan. It's virtually indistinguishable from this case.

13           So, Your Honor, Park Avenue Radiologists, the case  
14 that one of the objector cites is distinguishable, because  
15 the post confirmation debtor was not proposing the share the  
16 proceeds of the action with the creditors. The sources of  
17 the Court's power to grant this motion include the standing  
18 order, which allows the Court to direct mediation of  
19 adversary proceedings, contested matters or other disputes.

20           And in order to give all of the words of that  
21 order their proper meaning, Your Honor, you must find that  
22 other disputes includes matters that are not the subject of  
23 either adversary proceedings or contested matters, like  
24 these recently approved claims.

25           In addition, the order is entered in this case and

1 other similar proceedings can be relied on by Your Honor,  
2 and Section 105 which everyone seems to belittle, but the  
3 Court in the Efedra (ph) case actually used to implement a  
4 similar type of procedure.

5 Some of the sellers contend forcing them to  
6 mediate violates due process, but they confuse arbitration  
7 with mediation. And if you look at the Woods case from the  
8 Fifth Circuit, which we cited in our response, that and many  
9 other cases like it hold that the power to mediate, that the  
10 power to direct mediation does not infringe on due process  
11 rights, while the power to arbitrate, the power to direct  
12 arbitration may, but there's a meaningful distinction  
13 between non-binding mediation and arbitration.

14 We agree, you can't force someone to arbitrate,  
15 but you can force them to mediate. Nothing that can happen  
16 in the mediation to any of the sellers, that they did not  
17 consent to happen, other than having to mediate can take  
18 place. And as you noted, they can get out.

19 They'll get all the information they need to allow  
20 them to respond to our claims when we file the first notice.  
21 And I'm baffled by the argument that we have to sue them  
22 before you can direct them to mediate. Nobody has cited a  
23 case in support of that proposition, and they disregard the  
24 three words, "or other disputes" in the standing order,  
25 which I just mentioned.

1 So if Your Honor is --

2 THE COURT: Why don't I hear from some of the  
3 objectors.

4 MR. DEFILIPPO: All right.

5 THE COURT: I think that your reply did a good job  
6 of categorizing the different objections, so let me hear  
7 from each of them if you wouldn't mind.

8 MR. DEFILIPPO: Thank you, Your Honor.

9 THE COURT: Good morning.

10 MR. STEIN: Good morning, Your Honor, Philip Stein  
11 on behalf of seven of the objectors, Universal American  
12 Mortgage Company LLC, Standard Pacific Mortgage, Inc., Shay  
13 Mortgage, Inc., CTX Mortgage Company LLC, Prime Lending,  
14 Allied Mortgage Group, Inc., and Direct Mortgage Corp.

15 THE COURT: Okay.

16 MR. STEIN: Your Honor, I will dispense with any  
17 Stern versus Marshall argument, but what I would like to  
18 tell you is that what you first heard -- one of the initial  
19 comments by the debtors' counsel, and indeed something that  
20 was stated at length in their moving papers, is that  
21 essentially that they -- the debtors face a monumental task,  
22 a Herculean task with perhaps 1,100 lenders and as many  
23 3,000 loans or more at issue.

24 I think what the -- what Your Honor needs to  
25 recognize if you don't already is that they've faced exactly

1 the same task, except red larger for the last five years and  
2 have handled it quite differently.

3 At least 1,110 lenders or thereabouts, and far  
4 more than 3,000 loans have been put forward by the debtors  
5 in courts all across the country, federal and state courts.

6 THE COURT: But I'm not -- this is not going to be  
7 a, you know, Moroccan bizarre where you're going to try to  
8 convince me that you've got a better idea. They're the  
9 fiduciary, they proposed a procedure that's worked  
10 structurally so to speak with respect to other large groups  
11 of claims in these cases.

12 So I want to hear about why what they've proposed  
13 I can't order, because it has worked and it's worked well,  
14 and now they've come back again promptly upon the accrual of  
15 these indemnification claims subsequent to the settlement  
16 with Fannie and Freddie.

17 So what is it about -- other than the fact that  
18 you don't want to do it, you would rather put them to the  
19 expense of filing the lawsuits than having to respond to the  
20 mediation notice and engage in what frankly is the more  
21 minimal activity involved with participating in the  
22 mediation program. And then if that doesn't work, if they  
23 elect to proceed, they will sue you.

24 But we're talking about very narrowly  
25 circumscribed, cost-efficient, nonburdensome procedures that

1 are tailored for this situation. And other than the fact  
2 that you just would rather them have to sue you, well,  
3 what's your objection?

4 MR. STEIN: Your Honor, they're not more minimal  
5 for the parties to which they're directed. Many of those  
6 parties are already facing claims, pending claims, current  
7 claims by Lehman Brothers Holdings, Inc. in other courts  
8 across the country. We now are faced with the specter of  
9 dealing with them on multiple fronts. This one being a  
10 particularly inconvenient one for my clients.

11 THE COURT: But so they would have to sue you  
12 again. In other words, I don't -- I can't get past the  
13 Lehman has a dispute with you, they make you aware of a  
14 dispute. Either they make you aware of the dispute because  
15 they file a complaint against you that requires you to  
16 answer or to move to dismiss it and/or engage in discovery,  
17 or they put you in this mediation program, they send you a  
18 notice, and you respond to the notice. Either by saying, my  
19 claim was settled, we think we shouldn't have to do this,  
20 we're going to write a letter to the Judge, et cetera.

21 Action/reaction. I just -- I'm sorry, and I don't  
22 mean to be difficult, I just don't understand the difference  
23 in those two worlds, other than the fact that you would  
24 rather they have to spend more money and launch more  
25 litigations because that's more burdensome on them, so

1 burden on them is a disincentive for them to come after you.

2 But that's not the way it works.

3 MR. STEIN: Your Honor, we, the targets of the  
4 motion would rather spend less money ourselves, we're not  
5 focused on how many money Lehman is spending, we're focused  
6 on how much money we're spending.

7 THE COURT: And I understand that. And I just  
8 outlined for you why in the scenario in which the ADR is  
9 implemented, I'm not seeing the defendants, the punitive  
10 defendants having to spend a lot of money. I just -- I  
11 don't see it.

12 MR. STEIN: Okay. Well, let's talk about the  
13 process itself, and what it is they're advocating. While  
14 it's correct, as was suggested to you earlier that we're not  
15 here to discuss the substantive merits of the claim, I think  
16 one thing Your Honor does need to factor in in evaluating  
17 what's being requested here is kind of the track record of  
18 where we stand today.

19 These claims are almost certainly time barred,  
20 notwithstanding the fact that they're being presented to you  
21 as new indemnification claims that only accrued once they  
22 reached the settlement with Fannie or Freddie Mac.

23 When a particular variation of the statute of  
24 limitations argument has been made in cases brought by  
25 Lehman and adjudicated by federal and state courts thus far,

1 every single time that that argument has been made and ruled  
2 upon, the claims have been dismissed as time barred.

3 To have to come forward in this case --

4 THE COURT: You have a case under New York law  
5 that says that indemnification claims don't arise when --  
6 don't accrue once the underlying claims are paid.

7 MR. STEIN: Your Honor, I'm aware of at least  
8 eight that have been decided that way in recent months, yes.  
9 We're happy to supplement the briefing on that point if Your  
10 Honor deems it necessary. But that's --

11 THE COURT: So that if that's your position, then  
12 using the, what I'll call the escape hatch mechanism, you  
13 would simply write a letter that cites that authority, and  
14 ask me to let you out on that basis.

15 MR. STEIN: Well -- and if Your Honor is going to  
16 be receptive to those types of entreaties, that may make  
17 things very different, although we are reluctant, just as a  
18 threshold matter to be pulled in a little bit deeper, and to  
19 have --

20 THE COURT: So once again, you would rather they  
21 sue you and then you have to file a motion to dismiss on the  
22 basis that it's time barred, as opposed to taking me up on  
23 my suggestion that you simply send me a letter that says  
24 that. In other ADR procedures that we have going certain  
25 claimants have made the argument, or other litigation



1 procedures rather, that folks don't want to be a part of it  
2 because they're not subject to the personal jurisdiction of  
3 the court because they're foreign.

4 Similarly, they were given an opportunity in an  
5 efficient cost effective way to bring that to the Court's  
6 attention. So, Mr. DeFilippo, unless you're going to tell  
7 me I'm making this up, then problem solved, right.

8 MR. DEFILIPPO: Your Honor, I clearly see which  
9 way the Court is leaning and I understand that.

10 THE COURT: But you --

11 MR. DEFILIPPO: Let me mention a couple of points.

12 THE COURT: But we're not -- but this is not here  
13 -- we're not here -- I mean, we are here because we enjoy  
14 doing this, but you haven't explained to me why that doesn't  
15 work.

16 MR. DEFILIPPO: Let me try a couple of other  
17 points. The first, Your Honor, is that it's the supposition  
18 of at least my clients, perhaps the clients and other  
19 objectors -- of other objectors' counsel I should say, that  
20 if not brought into this proceeding, if not brought into  
21 this mandatory ADR mechanism, those suits that you're  
22 positing will be filed won't be filed, at least as to  
23 certain defendants.

24 In other words, this is their shot, trying to make  
25 us come here, trying to build momentum for some sort of

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 In Re: CHAPTER 11

5 LEHMAN BROTHERS HOLDINGS, INC., CASE NO. 08-13555(SCC)

6 ET AL, (Jointly Administered)

7 Debtors.

8 - - - - - x

9 In Re:

10 LEHMAN BROTHERS, INC., CASE NO.

11 Debtor. 08-08-1420(SCC)(SIPA)

12 - - - - - x

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 June 19, 2014

18 10:06 AM

19

20 B E F O R E :

21 HON. SHELLY C. CHAPMAN

22 U.S. BANKRUPTCY JUDGE

23

24

25 ECRO - MARIA R. and FRANCES FERGUSON

1 HEARING Re Trustee's Motion for an Order pursuant to  
2 Sections 105(a), 502(a), 502(c) and 726 of the Bankruptcy  
3 Code and Bankruptcy Rule 3009 (I) Establishing a final  
4 reserve for secured, administrative and priority claims,  
5 (II) Allowing certain secured, administrative and priority  
6 claims, (III) Authorizing the trustee to satisfy allowed  
7 secured, administrative and priority claims, and related  
8 relief (LBI ECF No. 8885)

9  
10 HEARING Re Fifteenth Application of Hughes Hubbard & Reed  
11 LLP for allowance of interim compensation for services  
12 rendered and reimbursement of actual and necessary expenses  
13 incurred from December 1, 2013 through March 31, 2014 (LBI  
14 ECF No. 9004)

15  
16 HEARING Re Joint notice of presentment of Seventh amended  
17 order pursuant to Section 78eee(b)(5) of SIPA, Sections 105,  
18 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a)  
19 and Local Bankruptcy Rule 2016-1 establishing procedures  
20 governing interim monthly compensation of trustee and Hughes  
21 Hubbard & Reed LLP (LBI ECF No. 9003)

22

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1 HEARING Re Trustee's Two Hundred Tenth Omnibus Objection to  
2 general creditor claims (no liability claims) (LBI ECF No.  
3 8284)

4  
5 HEARING Re Motion for alternative dispute resolution  
6 procedures order for indemnification claims of the debtors  
7 against mortgage loan sellers (ECF No. 44450)

8  
9 HEARING Re Two Hundred Fifth-Fourth Omnibus Objection to  
10 Claims (ECF No. 25059)

11  
12 HEARING Re Stonehill's Motion to re-file proofs of claim to  
13 fix previously unliquidated claim amounts or alternatively  
14 for leave to file amended claims (ECF No. 43988)

15  
16 HEARING Re Plan administrator's objection to proof of claim  
17 No. 33514 filed by Frank Tolin, Jr. (ECF No. 37839)

18  
19 HEARING Re Lehman Brothers Special Financing, Inc. v Federal  
20 Home Loan Bank of Cincinnati (Adversary proceeding No. 13-  
21 01330), Pre-Trial conference

22

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